

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

CYBERGENETICS CORP.,

Plaintiff,

v.

INSTITUTE OF ENVIRONMENTAL  
SCIENCE AND RESEARCH and  
NICHEVISION INC.,

Defendants.

Case No. 5:19-cv-01197-SL

Judge Sara Lioi

**PLAINTIFF’S STATEMENT OF NON-  
OPPOSITION IN RESPONSE TO  
DEFENDANTS’ “STIPULATED”  
MOTION FOR EXTENSION OF TIME**

Plaintiff Cybergenetics Corporation (“Cybergenetics”) submits this Statement of Non-  
Opposition to clarify its position with respect to the purportedly “Stipulated” Motion for  
Extension of Time to Answer Plaintiff’s Complaint or Otherwise Plead (“Motion”) (Doc. No.  
15) filed earlier today by the Institute of Environmental Science and Research (“ESR”) and  
NicheVision Inc. (“NicheVision”) (collectively, “Defendants”). Counsel for Defendants failed  
to give counsel for Cybergenetics any opportunity to review the purported “stipulation” prior to  
filing it with the Court, nor did counsel for Defendants even discuss the content of the Motion  
with counsel for Cybergenetics before filing it. Indeed, prior to filing the Motion, counsel for  
Defendants had not yet satisfied the sole condition precedent that Cybergenetics had placed on  
its agreement to the requested extension, namely, that ESR waive formal service of the  
Complaint (as Cybergenetics requested nearly two months ago).

In view of the foregoing, Cybergenetics respectfully advises the Court that in view of  
events *subsequent to the filing of the Motion*—namely, receipt of the Waiver of Service form

executed on behalf of ESR—Cybergenetics does not oppose that portion of the Motion requesting that the Court extend Defendants’ time to respond to the Complaint up to and including September 25, 2019. However, for the avoidance of doubt, Cybergenetics does *not* stipulate to the remainder of the Motion, particularly including Defendants’ self-serving and unsupported statements regarding ESR’s corporate status and the supposed burdens of responding to the Complaint. Defendants inaccurately characterized the Motion as “stipulated.”

Dated: July 18, 2019

/s/ Mark M. Supko

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2019, a copy of the foregoing Plaintiff's Statement of Non-Opposition in Response to Defendants' "Stipulated" Motion for Extension of Time was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

Dated: July 18, 2019

/s/ Mark M. Supko

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